

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

SARAH THRUL f/k/a SARAH TEWALT)	
)	
Plaintiff,)	
-vs.-)	
)	Civil Action No:3:15CV623 JAG
)	
LANDMARK PROPERTY SERVICES,)	
INC., et al.)	
)	
Defendants)	

DEFENDANT M.T.G. PROCESS SERVERS, LLC'S
MOTION FOR DISMISSAL FOR FAILURE TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED AND INCORPORATED MEMORANDUM OF LAW

Defendant M.T.G. PROCESS SERVERS, LLC (hereinafter "M.T.G.") by and through its undersigned counsel, hereby move this Court, pursuant to Rule 12(b)(6) Fed. R. Civ. P., for failure to state a claim upon as there are no genuine issues of material fact to be tried and M.T.G. is entitled to judgment as a matter of law; to wit, the statutes by which Plaintiff seek remedy specifically exclude process servers. In support thereof, M.T.G. demonstrates this Complaint was filed in express violation of 15 U.S.C. 41 – Consumer Credit Protection, *et seq.*, specifically 15 U.S.C. § 1962a(6)(D), 15 U.S.C. § 1601 and Virginia Code § 59.1-199(C), and as upheld by applicable case law.

1. The Complaint seeks recovery from three defendants: Landmark Property Services, Inc., Renaissance Mayfair, LP, and M.T.G. Process Servers, LLC., pursuant to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1962, *et seq.*, and the Virginia Consumer Protection Act of 1977, VA Code § 59.1-196. (Complaint at ¶1)

2. Specifically, Plaintiff alleges M.T.G. violated 15 U.S.C. § 1692e, 5 U.S.C. § 1692e(10), 5 U.S.C. § 1692f, and Va. Code § 59.1-200, *et seq.*

3. The Complaint properly alleges that M.T.G. is a process server (Complaint at ¶6), was specifically not retained as a skip-tracer (Complaint at ¶¶17-27) and was acting as a “messenger” during all times relevant to this matter.

4. As such, Congress, enacting the FDCPA statutes, expressly noted that the term “debt collector” does not include “any person while serving or attempting to serve legal process on any person in connection with the judicial enforcement of any debt...” 15 U.S.C. § 1692a(6)(D). *See also Romea v. Heiberger & Assoc.*, 163 F.3d 111, 117 (2d Cir. 1998) holding the FDCPA exception applies to “those individuals whose involvement in a debt collection communication was limited to serving the communication on the consumer – in effect, to being messengers [.]” *See also* S.Rep. No. 95-382, at 3-4 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1697-98 (The term debt collector is not intended to include ... process servers.).

5. Additionally, the Virginia Consumer Protection Act, VA Code §59.1-196 *et seq.* specifically excludes “Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*” *See* VA Code §59.1-199(C), and again expressly excludes process servers.

6. Pursuant to Rule 54(d)(1) Fed. R. Civ. P. District Courts have discretion to award costs to prevailing defendants “[u]nless a federal statute...provides otherwise.” (A district court may award costs to prevailing defendants in FDCPA cases without finding that the plaintiff brought the case in bad faith and for the purpose of harassment.) *Marx v. General Revenue Corp.*, 133 S. Ct. 1166, 1171 568 U.S. 2, 185 L. Ed. 2d 242 (2013).

WHEREFORE, Defendant M.T.G. respectfully requests this Honorable Court grant this Motion, and enter a finding noting that this matter was initiated against M.T.G. in express violation of the provisions of the FDCPA, and award Defendant's reasonable attorney's fees and costs, and any other relief the Court deems just, equitable and proper.

Respectfully Submitted,

M.T.G. PROCESS SERVERS, LLC

By: /s/ Richard J. Knapp
Of Counsel

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CERTIFICATE

I hereby certify that on November 19, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system who will then send a copy to counsel of record, and that I have mailed a copy of the same to the other parties not yet represented by counsel of record:

Landmark Property Services, Inc.
c/o Richard L. Hurlbert, Jr., Registered Agent
Two James Center
1021 E. Cary St, Ste 1400
Richmond, VA 23219

Renaissance Mayfair, LP
c/o Richard L. Hurlbert, Jr.
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/s/ Richard J. Knapp

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